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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.265 OF 2002

Vijaykumar Ningappa Hotkar
r/o. 2128, Sangameshwar Nagar,
Akkalkot Road, Solapur
at present in Yeroda Central Prison
Pune ... Appellant

V/s.

The State of Maharashtra ... Respondent

Mr.M.S. Mohite for Appellant
Dr.F.R. Shaikh, APP, for Respondent

CORAM: **V.G. PALSHIKAR, Ag. C.J. & SMT.NISHITA MHATRE, J.**

DATED: **SEPTEMBER 27, 2006**

ORAL JUDGMENT (PER SMT.MHATRE, J.):

. A young girl, Shubhangi, got married to the appellant on 11.12.2000. Shubhangi's parents resided at some distance from her matrimonial home. In the month of February 2001, the appellant dropped her at her parents' home. Shubhangi complained to her parents about the ill treatment and cruelty meted out to her by the appellant. The appellant came to fetch Shubhangi from her parents' home on 25.4.2001. Shubhangi's parents were not willing to send her back with the appellant because of the mental torture that she had faced. However, since the appellant convinced them about his good behaviour thereafter, they permitted her to leave with the appellant on 27.4.2001. On 30.5.2001, Shubhangi's father in law admitted her to the Civil

Hospital, Solapur as she had suffered severe burns in her house. The dying declaration of Shubhangi was recorded after ensuring that she was in a mentally fit state to have her statement recorded. Shubhangi stated that she had been burnt by the appellant who set fire to her after pouring kerosene on her. She succumbed to her injuries on 31.5.2001. The appellant was arrested on 30.5.2001, pursuant to the statement of Shubhangi and was charged for having murdered his wife under section 302 of the Indian Penal Code. His trial was committed to the I Adhoc Additional Sessions Judge, Solapur.

2. The prosecution has relied upon the evidence of 10 witnesses to prove its case against the appellant. PW1 is the father of the victim Shubhangi. He has deposed about the cruelty suffered by the victim at the hands of the appellant. He has also deposed that within two months of her marriage, Shubhangi complained to her mother that the appellant was treating her cruelly. The appellant complained to Shubhangi's parents that Shubhangi was not behaving properly with him. He told them to take away their daughter if she did not want to improve her behaviour. It appears that from the evidence of PW1 that he pacified the appellant and requested him not to quarrel with his daughter. About 1.1/2 months before the death of Shubhangi, the appellant again complained to PW1, telephonically, about Shubhangi's behaviour. The appellant had asked the

witness to take his daughter away. Since the witness could not do so on that day, being unwell, the appellant dropped Shubhangi off at her parental home around midnight. On being questioned, the appellant mentioned that he suspected Shubhangi's fidelity and therefore, did not want her in his house. The appellant left his father-in law's house the next morning. He phoned PW1 a few days later and requested him to send Shubhangi to her matrimonial home. The witness refused to do so. However, on 25.4.2001, the appellant went to his in-laws' residence in order to bring back Shubhangi. Despite the refusal by her parents, the appellant stayed in their home till 26.4.2001. A neighbour of PW1 advised Shubhangi's parents not to quarrel with the appellant and to send Shubhangi back to her matrimonial home, looking to her future. Accepting this advice, PW1 sent Shubhangi alongwith the accused on 27.4.2001 to her matrimonial home, much against his will. On 30.5.2001, approximately a month after she had left her parental home, PW1 received a call from the appellant's brother Sanjay informing him that Shubhangi had got burnt when she was set on fire after pouring kerosene on her person. On being questioned who was responsible for this act, Sanjay disconnected the phone. PW1 and his wife reached Solapur Civil Hospital at about 8 pm on that day. However, Shubhangi was declared dead by about 7 pm. The crossexamination of this witness does not in any manner cast a doubt on his examination in chief.

There are no material contradictions in the crossexamination. Therefore, there is no reason to disbelieve the evidence of this witness.

3. The evidence of PW1 is corroborated by PW2, the neighbour. This witness has disclosed that the complainant i.e., PW1 was not willing to send his daughter Shubhangi back to the accused since he suspected her character. PW2 has taken part in the discussions held between the father of Shubhangi and the appellant. This witness has stated that he convinced both the appellant and PW1 to refrain from quarrelling. He then also ensured that Shubhangi was sent to her marital home with the appellant on 27.4.2001 in the afternoon. PW3 is Shubhangi’s mother. She has corroborated the evidence of her husband, PW1. She has also mentioned regarding the phone call that was received from Sanjay, the brother of the appellant on 30.5.2001 informing them that Shubhangi had committed a suicide by burning herself.

4. PW4, the panch witness has proved the Spot panchanama. A can of kerosene oil, a match box, pieces of burnt saree, etc. were seized while conducting the panchanama. This witness has stated that the victim was burnt in the kitchen of the house which consisted of three rooms. He has observed that kerosene was spilt on the floor of the kitchen. The witness also speaks of

the father of the appellant informing them of how the incident occurred. The father of the appellant had stated that there was a quarrel between the appellant and the deceased. He had pacified them and then went to sleep. He heard the victim shrieking. He then extinguished the fire and covered the victim's body and removed her to hospital.

5. The Doctor who is examined as PW5 proved the postmortem report which indicates that the death was homicidal. PW6 is the Doctor who admitted the victim to hospital and informed the police. PW7 is the Special Executive Magistrate called by the police on 30.5.2001 to the Civil Hospital for recording the statement of the victim. He has stated that the Doctor, PW6, assured him that the victim was conscious and in a position to have her statement recorded. This evidence of the Special Executive Magistrate was corroborated by the Doctor, PW6. Another dying declaration was recorded by the Police after ascertaining from the Medical Officer that the victim was in a position to give a declaration. The dying declarations have been recorded after ascertaining that the victim was in a stable condition and was mentally fit for her statements to be recorded. Both these declarations are consistent versions of the victim. There are no discrepancies, omissions or additions or contradictions between the two dying declarations. In both these statements, the victim has

stated that the appellant doused her with kerosene, set her on fire with a lighted matchstick.

6. The version of the victim in both these dying declarations is consistent and therefore, can be accepted. The victim has implicated the appellant. There is no reason to doubt her version as there is no material on record to indicate otherwise.

7. PW8, the ASI, is the police officer who called the Special Executive Magistrate for recording the dying declaration. This witness has also stated that he ensured from the Medical Officer that the condition of the victim was stable. PW9 is the victim's neighbour who saw the appellant leaving the house. She has also heard Shubhangi shout out that she was burnt by the appellant. PW10 is the Investigating Officer, who has received the dying declaration from the Special Executive Magistrate and recorded the statement of the witnesses. The learned advocate appearing for the appellant submitted that PW9 is a got up witness and no reliance could be placed on her. He submits that this witness did not report the matter to the police nor did she bother to tell anybody else of the incident, although the prosecution claims that she had seen the appellant leave the house while Shubhangi was shouting after having been burnt. He submits that other persons whose statements were recorded have not been examined as

witnesses by the prosecution. This according to the learned Advocate, creates a doubt about the case of the prosecution. The learned Advocate also submits that had the theory of the prosecution been correct, the appellant would have also suffered burn injuries. Besides this, the other articles in the room where Shubhangi was burnt would have kerosene on them. He submits that the prosecution has failed to prove these facts and, therefore, it is obvious that the theory of prosecution is incorrect. He suggests that in all probability Shubhangi had committed suicide by dousing herself with kerosene. According to him, this is consistent with the fact that no kerosene had splashed on the other articles in the room, nor was any kerosene evident on the floor. He therefore submits that the impugned judgment should be set aside.

8. As mentioned earlier, the dying declarations by themselves would be sufficient to establish the charge against the appellant. These statements of the victim are corroborated by the evidence of PW9. The evidence of PW1, PW2 and PW3 indicates that the appellant had serious grievances about his wife, the victim and had reluctantly allowed her to cohabit with him.

9. The learned Advocate had also submitted that the appellant had in fact visited certain medical stores on that day for recovering amounts due from them as he was

working as a medical representative and therefore, there could have been no possibility of him setting his wife on fire. He submits that if PW9 is to be believed she has seen the appellant leave the house in the morning on 30.5.2001. Therefore, the possibility of the appellant having committed any offence cannot be accepted. In our opinion, this submission is without any merit since it was for the appellant to establish in rebuttal that he had in fact gone to the medical stores for recoveries and therefore, there was no possibility of him having committed the offence.

10. The submission of the learned Counsel that Shubhangi had committed suicide is unfounded. The photographs of the kitchen showed several burn marks on the tiles of the floor which obviously would mean that the kerosene had spilt on to the floor and had ignited. The mere fact that there were no burn injuries on the appellant would not be sufficient to accept the submission of the learned Advocate for the appellant that the case was one of the suicide. The appellant had doused the victim with kerosene. There was no possibility of him having any kerosene on his person. The victim is very categoric when she states that the appellant poured and not splashed kerosene over her. Therefore, the question of any kerosene splashing on any other articles in the room does not arise.

11. In our opinion, the learned trial Court has considered the evidence on record in his proper perspective. He has marshalled the facts as assessed the evidence and has rightly concluded that the appellant is guilty as charged. We have, after scrutinising the evidence on record, arrived at the same conclusions. As it happens all too often in our society, a young lady’s life has been snuffed out by her husband in a most heinous manner. The conviction and sentence imposed by the trial Court is confirmed.

12. Appeal dismissed.